

our area of authority, make sure the laws of the land are upheld. And we have to provide oversight for that.

We have been joined by another one of our distinguished colleagues, a freshman Member, one of our most passionate Members from New Hampshire, CAROL SHEA-PORTER, and I yield to her.

□ 2230

Ms. SHEA-PORTER. I am happy to be here. I am standing here tonight at 10:30 for the same reason that we are all here, because we believe that it's our obligation, our duty to defend the Constitution. This Constitution is a gift that has been handed to us through the centuries, and it's the envy of the world. This is what differentiates us from other nations.

To give you an idea of our Founding Fathers and what they thought about this, at the conclusion of the Constitutional Convention, Benjamin Franklin was asked, What have you wrought? And he said, A Republic, if you can keep it.

So they understood even then that we would have to defend this Constitution against well-meaning people who believed that they had to give up some liberty in order to make themselves safe. This is not the first time in our history that we have faced peril, as you know. This has been an ongoing issue for us through the centuries. There are always countries that wish to do us harm, and it is our obligation to keep ourselves safe and to keep the American public safe. But that is not what this argument is about, as you know, because we have FISA, and FISA is in effect.

Now the President more than suggested that the intelligence community went dark and that they would be unable to do any surveillance. But the reality is, and the President and the Justice Department had to admit recently, that the wiretaps could still go on.

I would just like to read this so people understand what we are talking about here. This is from Reuters: "White House Says Phone Wiretaps Back on For Now." Here's the quote, the statement from the Justice Department, the Office of the Director of National Intelligence: "Although our private partners are cooperating for the time being, they have expressed understandable misgivings about doing so in light of the ongoing uncertainty, and have indicated they may well discontinue cooperation if the uncertainty persists." Well, first of all, where is the patriotism there? If they believed this was for the good of the country, they should stay with this program, and will stay with this program.

Also, as my fellow Congressmen indicated, when they failed to pay the bills for the wiretap, these companies pulled the wiretaps, and we lost some critical information. So you have to wonder about that commitment there.

But there's a larger issue. First of all, we do have all the national secu-

rity that we need right now. You're right that we need to tweak it, and we tried to. We tried to extend this for 3 weeks so that we could work it out. If it were so critical, why did the President and his supporters vote to let it go? We voted to extend it for 3 weeks.

So there's something that is counterintuitive and actually bizarre, that the President and his supporters would argue on one hand that we were allowing something to drop that was so critical and, on the other hand, refuse to vote to extend it for 3 weeks. So they didn't give us the time that we needed to do two things. We have to do all we can to protect Americans, and tweak this, but we also have an obligation to protect the Constitution while we do this.

So what have we done here? The intelligence community has not gone dark and the authority under this act allows the administration to conduct surveillance here in the United States of any foreign target. I am now reading from the House majority staff of the House Permanent Select Committee on Intelligence. It's important that we cite these sources so that we know. "In the event that a new phone number or e-mail address is identified, the NSA can add to the existing orders." They can begin surveillance immediately, without a court warrant. Within 72 hours they have to get one. That sounds perfectly reasonable to have judicial oversight and review.

So it's not true that people can't do surveillance. They can do surveillance. They must do surveillance. If we think that there are terrorists talking on the phone, I want them to be able to listen in, and so do you. We have families here. We want the same protection that other Americans want. And they can listen in.

But there's something else happening here, and this is called the retroactive immunity for the phone companies. What do we mean by retroactive immunity. What is immunity about? If you don't do anything wrong, you don't need immunity. Immunity suggests that something happened, and you're asking for this protection. And how can we say, sure we'll give it to you until we know what they did? Why won't they tell us what they did?

I liken it to somebody, a defendant showing up in court and saying to the judge, Well, judge, I may or may not have done something wrong. I am not going to tell you. But I want you to say maybe you did and maybe you didn't, but whatever it is, you're forgiven right away.

We would not accept that from an individual, and we must not accept it for any businesses either. We are, as John Adams said, a government of laws, not men. Nobody is above the law. Not you, not I, not any individual, not any company. They knew what they were supposed to do.

I would like to point out that Qwest knew that, another telecom company, and did not follow the President's re-

quest there. The President is not the one who sets the Constitution. He is not the one who decides. We have three branches of government. We must have judicial review and oversight. And it's our obligation, as it has been on every Congressman and Congresswoman's shoulders, to watch out for this incredibly brilliant document that is the envy of the world.

Mr. YARMUTH. If the gentle lady will yield, I would like to reinforce one statement you made. You talked about the fact that we wanted to extend the act for 21 days so that we could make these corrections. It wasn't just that the President threatened to veto the bill and we voted to extend it. All 202 Republicans voted against the extension.

I actually was mystified to watch a news show right around that time, on which they said the Democrats refused to extend the act. I said, boy, is that ridiculous spin. Because we proposed the extension. Every one of the Republicans opposed it, the President threatened to veto it and demagogued it, and yet we were blamed for something we tried to do.

I yield back.

Ms. SHEA-PORTER. We were looking for a bipartisan agreement. If it's that critical, then we should have had the extension. But they know what we know, which is that FISA is still in effect, that they can eavesdrop without a warrant. That they simply, if there's an American involvement, they have to go get a court warrant within 72 hours.

By the way, that is not difficult to do. Over the period of years, there have been thousands and thousands of requests. I think only five have been refused. So this is not a problem. If they consider having to get a warrant a problem, I am sorry, but something stands between the President and this, and it's called the Constitution.

I come from a Republican family. My father was an attorney, and he was a very conservative Republican. I worked in his law office. And he taught me this great love for the Constitution. So the reason I point that out is because this is not a political issue. This has to do with the Constitution. And so regardless of whether people are Republicans or Democrats, what we saw here when they didn't extend it was a political maneuver. But it should not be. It is our first and foremost obligation to protect our freedoms while we protect our Constitution.

Mr. YARMUTH. I want to yield again to my colleague from Wisconsin, but one of the things that intrigued me earlier was the notion that somehow we were not interested in security, that we were not interested in fighting the most effective fight that we could against 9/11, and that we were playing politics with the security of this country. That seems to me to be kind of standard rhetoric when we are talking about these matters, when in fact we tend not to deal with what is in the actual law, what the facts of the situation are.